— where a criminal mind is an essential element — unless he has personally participated. *Commonwealth* v. *Nichols*, 10 Metc. (Mass.) 259; see 1 CLARK & SKYLES, AGENCY, § 520. It must follow that corporations can be held for such offenses only by applying *respondeat superior* to them where it does not apply to individuals, or else by treating the acts of its governing officers as the personal acts of the corporation itself. No court has ever expressly adopted the first alternative, and it cannot be justified unless — as seems doubtful — the law fails to apply *respondeat superior* to all crimes merely out of tenderness to innocent human employers. See *Commonwealth* v. *Wachendorf*, 141 Mass. 270, 271, 4 N. E. 817, 818. But there is reason to think that the second alternative is the law. The Supreme Court holds corporations liable in exemplary damages for the torts of their "officers," but not for those of their "agents." *Denver & Rio Grande Ry. Co.* v. *Harris*, 122 U. S. 597, 7 Sup. Ct. 1286; *Lake Shore & M. S. Ry. Co.* v. *Prentice*, 147 U. S. 101, 13 Sup. Ct. 261. A few other cases hold that corporations act *per se* through their officers. *American Soda Fountain Co.* v. *Stolzenbach*, 75 N. J. L. 721, 68 Atl. 1078; *Bank of Toronto* v. *McDougall*, 15 U. C. C. P. 475. This idea seems sensible. Abandoning the notion that a corporation is an ideal being and treating it simply as an organization of men, the officers by which that organization acts appear as integral parts of the corporation, and their official acts as the immediate acts of the corporation itself. See 21 HARV. L. REV. 535. Apparently some regular officer was concerned in every crime involving an evil intent of which a corporation has yet been convicted. It is believed that these decisions are correct in result and represent an unconscious adoption of the principle which the Supreme Court has applied to the case of exemplary damages.

CRIMINAL LAW — EFFECT OF UNAUTHORIZED POSTPONEMENT OF EXECUTION. — After legally sentencing the petitioner to two years' imprisonment, the trial court illegally gave him his liberty on condition that he leave the state. After two years he returned. *Held*, that he must serve the original sentence. *Ex parte Lujan*, 137 Pac. 587 (N. Mex.).

Illegal delay in sentencing one convicted permanently deprives the court of its jurisdiction to pronounce sentence. *People* v. *Barrett*, 202 Ill. 287, 67 N. E. 23; *United States* v. *Wilson*, 46 Fed. 748. Some courts have given like effect to illegal postponement of execution of sentence, after the time the sentence should have expired if served. *In re Webb*, 89 Wis. 354, 62 N. W. 177; *Ex parte Clendenning*, 1 Okla. Cr. 227, 97 Pac. 650. The cases seem clearly distinguishable. A valid sentence having been imposed, the prisoner is illegally at large. Sentence is not satisfied when the prisoner is at liberty after escape. *Dolan's Case*, 101 Mass. 219. Nor when liberty is due to the neglect of the sheriff. *Miller* v. *Evans*, 115 Ia. 101, 88 N. W. 198. There seems to be no reason for distinguishing the illegal act of the court. And the principal case is supported by authority. *Fuller* v. *State*, 1 Miss. 811, 57 So. 806; *Neal* v. *State*, 104 Ga. 509, 30 S. E. 858.

COVENANTS RUNNING WITH THE LAND — COVENANTS IN SUPPORT OF AN EASEMENT — AFFIRMATIVE COVENANTS IN EQUITY. — A. granted land to B. with an easement to take power from a water wheel on A.'s adjoining land. A. also covenanted to construct and maintain a shaft from the wheel to B.'s land. The plaintiff, the grantee of B., sought enforcement against A.'s grantee. *Held*, that the defendant is bound as to the easement but not as to the covenant. *Miller* v. *Clary*, 103 N. E. 1114 (N. Y.).

The New York courts have previously held that an affirmative covenant runs with the land in equity if it is such as can be enforced according to the ordinary rules of specific performance. See 14 HARV. L. REV. 301. This has been the prevailing American view. See 22 HARV. L. REV. 597. The

English authority, which the principal case expressly follows, is *contra*. *Ibid.* But covenants in support of an easement according to the American view run at law as well as equity. *Denman* v. *Prince*, 40 Barb. (N. Y.) 213; see 23 HARV. L. REV. 298. The principal case, therefore, not only overrules the earlier cases as to affirmative equitable servitudes, but adopts the English view that an easement does not make sufficient privity of estate to permit the burden of a covenant to run at law.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — EFFECT OF TEMPORARY BREACH NOT CONTRIBUTING TO LOSS. — The insured in his application agreed not to engage in the business of handling electric wires and dynamos for one year following the date of the policy. The policy expressly made the application a part of the contract of insurance. The insured did enter the business during the year, and his death occurred while so engaged after the expiration of the year. *Held*, that the beneficiary may recover. *Edmonds* v. *Mutual Life Insurance Co.*, 144 N. W. 718 (S. D.).

The breach of a material representation or a warranty as to a present fact, though not contributing to the loss, avoids an insurance policy. *McGowan* v. *Supreme Court of Independent Order of Foresters*, 104 Wis. 173, 80 N. W. 603; *Johnson* v. *Maine & New Brunswick Ins. Co.*, 83 Me. 182, 22 Atl. 107. The same rule applies to the breach of a condition or promissory warranty continuing to the time of the loss. *Norwaysz* v. *Thuringia Ins. Co.*, 204 Ill. 334, 68 N. E. 551; *Hill* v. *Middlesex Fire Ins. Co.*, 174 Mass. 542, 55 N. E. 319. *Contra*, *Joyce* v. *Maine Ins. Co.*, 45 Me. 168. Likewise the policy is void if the breach existed from the outset even if it ceased before and had no causal connection with the loss. *Georgia Home Ins. Co.* v. *Rosenfield*, 95 Fed. 358. When such a temporary breach, however, arises after the issuance of the policy, there is a conflict of authority. The English courts hold that the policy is void. *De Hahn* v. *Hartley*, 1 T. R. 343; *Birrell* v. *Dryer*, 9 A. C. 345; STAT. 6 EDW., VII, c. 41, § 34 (2). The better American view is in accord. *Douglas* v. *Knickerbocker Life Ins. Co.*, 83 N. Y. 492; *Moore* v. *Phoenix Ins. Co.*, 62 N. H. 240; *Kyte* v. *Commercial Union Ins. Co.*, 149 Mass. 116, 21 N. E. 361. Many cases apparently holding that the policy is merely suspended are distinguishable because the policy expressly so provided or no real breach occurred. *Union Life Ins. Co.* v. *Hughes' Adm'r.*, 110 Ky. 26, 60 S. W. 850; *Kircher* v. *Milwaukee Mutual Ins. Co.*, 74 Wis. 470, 43 N. W. 487. But some courts clearly hold with the principal case. *Sumter Tobacco Co.* v. *Phoenix Ins. Co.*, 76 S. C. 76, 56 S. E. 654; *Insurance Co. of North America* v. *Pitts*, 88 Miss. 587, 41 So. 5. As the application in the principal case was incorporated as a part of the insurance contract, its promises become warranties in the policy. *Mutual Life Ins. Co.* v. *Kelly*, 114 Fed. 268. The effect then is the same as if the policy expressly provided for forfeiture on a breach by the insured. *Brignac* v. *Pacific Mutual Life Ins. Co.*, 112 La. 574, 36 So. 595. The view in accord with the principal case, therefore, disregards the stipulations of the contract and causes the insurance to be continued on a different basis from that intended. A statute rather than judicial legislation seems the proper way to prevent forfeiture in such cases, if that be desired. See HOWELL'S MICH. STATS. § 8348; IOWA CODE, § 1743.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — FEDERAL EMPLOYERS' LIABILITY ACTS — EMPLOYEES PROTECTED BY ACT. — The plaintiff's intestate, a locomotive fireman, had prepared his engine for a trip between two points within a state, the train containing cars which had just arrived from another state. While on the company's premises, but before the journey had actually begun, the deceased was run over and killed. The accident was due to the negligence of a fellow servant. Action was brought, but not in proper form for